

HENRY CARTER

IBLA 76-214

Decided February 24, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-6441.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Rentals

An oil and gas lease terminated by operation of law for failure to pay timely the advance rental may be reinstated only where the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Past adherence to the requirement of timely payment does not justify a subsequent failure to make timely payment. Mailing a rental payment at Chicago, Illinois, to Salt Lake City, Utah, 1 day before the due date does not constitute reasonable diligence.

APPEARANCES: Henry Carter, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Henry Carter has appealed from a decision, dated August 20, 1975, rendered by the Utah State Office, Bureau of Land Management (BLM), which denied his petition for reinstatement of oil and gas lease U-6441.

The lease terminated by operation of law because the advance rental was not paid on or before the anniversary date of the lease, i.e., August 1, 1975, as required by 30 U.S.C. § 188(b) (1970), and 43 CFR 3108.2-1(a). The envelope containing the check for payment, dated July 31, 1975, was postmarked at Chicago, Illinois, on the same date. It was received by BLM on August 4, 1975.

Appellant suggests that "accepting" his new check, dated August 9, 1975, cures the deficiency. But there is no warrant for that posture. The rental must be received by the proper office timely to meet the requirements of law. Cf. H. E. Stuckenhoff, 67 I.D. 285 (1960). He also states that he assumed that the payment would be deemed satisfactory if his check was dated before the due date. As previously indicated, it is the date of receipt by the proper office which governs.

[1] Appellant asserts he would have been happy to pay a "late charge" and that he has "never been late before." Termination by operation of law is mandatory when the payment is not received timely by the proper office and past adherence to the requirement of timely payment does not justify or serve as a predicate for excusing a subsequent failure to do so.

We proceed to consider whether there is a proper basis for reinstatement of the lease.

30 U.S.C. § 188(c) (1970), and the regulations thereunder, 43 CFR 3108.2-1, authorize reinstatement of an oil and gas lease terminated for failure to pay rental timely, upon a showing by the petitioner that the failure was either justifiable or not due to a lack of reasonable diligence. Nothing in the record suggests that this failure was justifiable. We look to 43 CFR 3108.2-1(c)(2) to determine whether appellant has met the standard of exercising reasonable diligence. That regulation provides:

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

Thus, the question is raised whether appellant, in mailing payment at Chicago, Illinois, on July 31, 1975, to Salt Lake City, could have reasonably anticipated that the payment would be delivered the next day, taking into account normal delays in the mail.

This is not a question of first impression. In Joseph Wachter, 22 IBLA 95 (1975), the Board held that mailing the rental payment from California to Montana the day before its due date did not

constitute reasonable diligence. Mailing the rental from Dallas, Texas, to Billings, Montana, the day before its due date was held not to constitute reasonable diligence. Gordon R. Epperson, 16 IBLA 60 (1974).

We hold that mailing in Chicago, Illinois, on July 31, 1975, a rental payment due August 1, 1975, in Salt Lake City, does not constitute reasonable diligence.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joseph W. Goss
Administrative Judge

